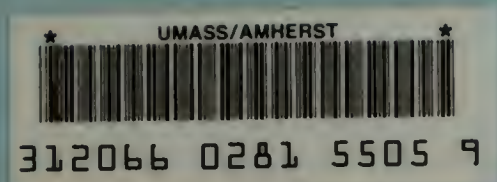


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GUARDING OUR CHILDREN

**A Review of Massachusetts' Guardian Ad Litem Program
within the Probate and Family Court**

**Senate Committee on Post Audit and Oversight
March 2001**

Massachusetts Senate

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The Senate Committee on Post Audit and Oversight works to ensure that state government is accountable to the citizens of the Commonwealth. The Committee's charge is to monitor compliance with state laws, to act as a watchdog to protect taxpayers from waste and fraud, to evaluate the efficiency and effectiveness of state agencies and programs, and to recommend corrective actions through legislation, regulation, and administrative initiatives.

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Highlights

- Guardians Ad Litem (GALs) within the Probate and Family Court are appointed by a judge to investigate child custody cases and make recommendations to the court based on the child's best interests.
- Although GALs are called upon to make recommendations in the most difficult custody cases, Massachusetts does not ensure that GALs are properly trained to make critical decisions.
- GAL investigations and reports vary widely in thoroughness and content because no standards exist for how GALs should conduct their investigations or report their findings to the court.
- The GAL system in Massachusetts does not effectively incorporate the standards of the Presumption of Custody Law, which is designed to protect children from parents with a history of domestic violence.
- There is no widely understood process regarding how to file a complaint concerning a GAL.

Background

Last year more than 6,000 cases in the Probate and Family Court involved a Guardian Ad Litem (GAL). Many of these cases used a GAL to provide child custody recommendations, although GALs may be used in other situations as well, such as trust and estate cases. The presiding judge in a child custody case appoints a GAL when he or she determines that it is not possible to decide what is in the best interests of the child based solely on evidence and testimony presented in court. GALs are usually attorneys or clinicians and are most often appointed in difficult custody cases, frequently involving allegations of sexual or physical abuse of the child or spouse or substance abuse by a family member. Thousands of children caught in the middle of difficult divorce proceedings are impacted by the work of GALs every year.

In 1999, the Supreme Judicial Court (SJC) enacted Rule 1:07 in order to increase participation by women and minorities among fee-generating appointments in the courts, including GALs. Rule 1:07 created a rotating system that is now used to assign all GALs so that those on the list are appointed in sequential order unless a judge provides a written explanation for making an appointment out of order. Under Rule 1:07, each court within the state court system is required to establish general standards for listing individuals as potential court appointees. When a GAL is appointed, the judge outlines when the report is due, how many hours the GAL should work on the case, and what issues the GAL is to investigate.

The criteria to become a GAL in the Probate and Family Court are minimal, such as having sufficient malpractice insurance and being in good standing with the GAL's licensing board for their underlying profession. These minimal criteria do not address specific areas of expertise, for example, whether or not a GAL is qualified to identify signs of physical or sexual abuse. Presently there is no structure in place to ensure that GALs entering the system from various professional backgrounds receive training in areas with which they are not familiar, but will encounter in their capacity as a GAL.

Family Abuse Impacts Children

According to statistics from the National Abuse and Neglect Reporting System, an estimated 903,000 children were victims of maltreatment in 1998. Maltreatment includes physical and sexual abuse as well as neglect.

A 1989 Massachusetts Supreme Judicial Court Gender Bias Study found that boys who witness their father battering their mother are more likely to become abusers themselves. A 1996 Report of the Governor's Commission on Domestic Violence found that children witness more than two-thirds of partner abuse incidents. This same report found that the Department of Youth Services for the City of Boston reported that children of abused mothers are six times more likely to attempt suicide, 74% more likely to commit crimes against a person, 24 times more likely to have committed sexual assault crimes, and 50% more likely to abuse drugs or alcohol than children whose mothers are not battered.

In another study cited in the Journal of American Orthopsychiatry, researchers interviewed a sample of children who had witnessed one of their parents being physically abused. The study found that 85% of the children who had witnessed domestic violence had moderate to severe symptoms of Post Traumatic Stress Disorder.

Inadequate Training and Eligibility Guidelines

To make informed and appropriate custody recommendations, a GAL must conduct an investigation to untangle layers of family relations and differing versions of events. Often GAL cases include allegations of domestic violence, sexual assault, or substance abuse by a family member. In order for a GAL to determine what is in the best interests of the child, he or she needs to thoroughly understand the issues involved in the particular case. Currently there is no mechanism to ensure a GAL who is trained in how to recognize signs of abuse will be appointed to a case involving allegations of such abuse.

Testing Travesty

In a 1998 custody case before the Norfolk Probate Court, a GAL ordered and administered a psychological evaluation of a mother who was allegedly a victim of domestic violence. According to Dr. Maureen Carnes, expert witness in the case, and the authors of the psychological evaluation, the interpretation of the test's score needs to be adjusted if the person being tested has experienced trauma such as domestic violence. If the trauma is not factored into the interpretation of the score, the results can be skewed. For example, in this case the woman's test claimed she had pathological behavior. However, Dr. Carnes believed that the behavior was a result of the abuse and that the mother was not pathological. The GAL did not factor in the trauma experienced by the mother and used the skewed results of the test against the mother in the final GAL report.

In the past, GALs in Massachusetts have not been required to receive any specific "GAL training." However, beginning this year, the Probate and Family Court will require all GALs to participate in six hours of professional development training each year. This is still a minimal requirement. By comparison, the state of New Hampshire requires 20 hours of professional development training before a person can be certified as a GAL. The state of Minnesota, which is considered a national model for GAL systems, requires GALs to participate in 40 hours of specific GAL professional development training prior to their first appointment and 8 hours of training every year thereafter.

Lundy Bancroft, an expert in domestic violence issues and a practicing GAL in Massachusetts, recommends extensive training specifically in the area of domestic violence, since it is often a factor in child custody cases. Furthermore, Mr. Bancroft contends that in his experience GALs without specific domestic violence training often act in ways that put the children they are charged with protecting at risk and unwittingly re-traumatize domestic violence victims.

Going Without Guidelines

The American Psychological Association has established guidelines for child custody evaluations in divorce proceedings. These guidelines include a recommendation that the evaluator have training, education, or experience in areas such as child and family development and the impact of divorce on children. In addition, child custody evaluators should have an understanding of applicable legal standards and procedures. Neither these nor any other guidelines have been adopted for use in the Massachusetts GAL system.

Lack of Standards for GAL Investigations and Reports

GAL investigations and reports vary widely in thoroughness and content because no statewide standards exist for how GALs should conduct their investigations or report their findings back to the court. This lack of standards can create problems with the fairness and accuracy of a GAL's assessment. For example, although it is customary practice for a GAL to ask both parties for a list of people who they would like the GAL to speak with regarding the case, there are no guidelines describing who a GAL should interview or what questions the GAL should ask in order to make an accurate assessment of the custody situation. According to several attorneys interviewed by the Senate Committee on Post Audit and Oversight (Committee), some GAL reports are being filed without both parents even being interviewed.

Half of the Story

In a 1999 custody case before the Suffolk Probate and Family Court, the mother alleged that her ex-husband physically abused her during their marriage. The GAL never interviewed the mother during his investigation. However, the GAL did interview the father, who denied abusing his ex-wife. Based solely on the father's statements, the GAL issued a report stating that there was no evidence of domestic violence and recommended that the father have joint custody of the child.

After completing an investigation, a GAL must submit a written report to the judge to help him or her determine custody or visitation for the child in question. However, according to a number of GALs interviewed by the Committee, there are no statewide standards for what must be included in a GAL report. Consequently, the completeness and thoroughness of these reports vary widely. The lack of standards for the reports can create serious due process concerns for the people involved in a case and jeopardize the soundness of the eventual custody decision.

In addition, without a consistent standard for what a report should include, it is difficult to evaluate the quality of a GAL's work. Furthermore, the court does not maintain adequate data documenting the total number of cases involving GALs or complaints about GALs. Without such documentation, there is no way to adequately evaluate the quality of a GAL's work or the effectiveness of the GAL system.

Visitation with an Alleged Sex Abuser

In a current case before the Dukes County Probate and Family Court, a GAL stated in his report that he believed the father had sexually assaulted his son. He made this conclusion based on a DSS investigation, an interview with the child's therapist, comments from the child's mother, and comments from the child himself. However, the father and the father's sister both maintained that the father had not sexually assaulted his son.

Despite the conclusion that the boy was sexually abused and that the father denied committing this crime, the GAL recommended that the father be allowed to visit his son and suggested that a family member could be an appropriate supervisor of the visitation. The GAL made no recommendation that the father seek professional counseling in regard to his allegedly assaulting his son. The judge ordered visitation for the father supervised only by the same sister who denied that the abuse had ever occurred.

While visitation with an abuser is sometimes considered by child psychologists to be beneficial, the circumstances under which it can be positive for the child require strict supervision and a recognition of the abuse from the abuser. In this case, neither circumstance was satisfied.

This story was first reported on WBZ Channel 4 by Joe Bergantino.

In 1998 the Legislature enacted the Presumption of Custody Act, establishing a standard that in custody cases a judge must presume that if a parent has abused the child or the other parent, it is in the best interests of the child to be placed with the non-abusive parent. Given this statutory requirement, it is troubling that GAL reports are not required to include evidence of domestic violence. This law was enacted because children who witness violence between their parents have higher rates of suicide, substance abuse, and emotional, cognitive, and behavioral difficulties. The lack of standards for GAL reports undermines the effectiveness of the Presumption of Custody Act because judges may be denied relevant information about domestic abuse.

Absent Abuse Evidence

In a 1999 custody case before the Hampden County Probate and Family Court, a GAL recommended custody for the father, despite the mother presenting strong evidence that domestic violence had occurred while the couple was married.

In his report, the GAL concluded that abuse had not occurred. He based this finding in part on a conversation he claimed he had with the couple's former marriage counselor. However, the marriage counselor stated in an affidavit that the GAL never contacted him, and that the issue of domestic violence was raised in several sessions with the couple while they were still married.

During the Committee's interviews with GALs, a frequently mentioned concern was the lack of a forum to answer basic questions and explain particular procedures to GALs who are unclear about how to proceed with their investigation.

Missing Mentors

There are no easily accessible resources to help a GAL determine how to resolve the common problem of two parents disagreeing on the role of the child in the investigation or other questions that can arise during a GAL investigation.

In a 1996 custody dispute involving a GAL, a disagreement arose between the parents about whether or not an attorney should be present during the GAL's interview with the child. There are no written guidelines on whether or not a GAL must allow counsel to be present during an interview with the child. In general, without guidelines on basic issues, questions like these must be resolved via a formal letter, a motion to the court, or by the GAL's sole determination. In this case, the GAL made a unilateral decision not to allow legal counsel to be present.

No Clear Complaint Process

For the parties in a custody case, the Probate and Family Court process can be confusing. This already difficult process can become a nightmare if a party feels that a GAL appointed to the case has acted in an incompetent or biased manner. In such a situation, the dissatisfied party may not know where to turn for assistance. Although Committee interviews with the Chief Justice of the Probate and Family Court revealed that he will hear complaints about the process, many parties are unaware that they can bring a complaint to his attention. Furthermore, taking an issue to the highest level of the Probate and Family Court may seem intimidating for many people.

Currently, if a party in a case would like to file a complaint there are two choices: they can file a complaint with the presiding judge in the case or with the Chief Justice of the Probate and Family Court. During the Committee investigation, no attorney or GAL who was interviewed by the Committee was aware of any complaint process other than filing an objection about a GAL's conduct with the presiding judge. Presently, the Court does not provide parties or their attorneys with information regarding their rights when a GAL is appointed to their case or how they can file a complaint concerning a GAL. Many probate attorneys interviewed were reluctant to file a complaint with a presiding judge because they would likely come into contact with the GAL in future cases and were concerned about retribution.

The lack of a well-understood forum for resolving complaints specifically related to the GAL process creates numerous problems. First, parties can leave the Probate and Family Court feeling that the process was unfair and that justice was not served. Second, without a well-known system to address complaints about the conduct of

GALs, allegations of bias, negligence, and incompetence may go unaddressed. Without a centralized complaint process and adequate record keeping, it is difficult for the court to identify specific areas where a GAL might require discipline or further training. In the most severe cases, it might be necessary to permanently disqualify a GAL.

National Perspective

Florida and Minnesota stand out as role models for developing cohesive GAL programs. Florida recently redesigned its GAL system and produced a comprehensive manual for all GALs. The manual seeks to familiarize GALs with the Family Court system and the legal process, since many GALs are not attorneys. The manual outlines specific expectations of how a GAL should conduct an investigation, including who the GAL should meet and how to help children feel at ease during an interview. In addition, the manual specifies the appropriate structure for a GAL report.

The Florida and Minnesota systems present a sharp contrast to the Massachusetts GAL system. Both Florida and Minnesota require GALs to participate in extensive training prior to their first appointment in addition to attending annual training programs. Furthermore, both states have created systems with clear standards to assist GALs in doing their job and to allow the parties in a particular case to know what to expect from a GAL investigation and report.

Minnesota Wrestles with GAL System

Minnesota used to have a splintered system where each district ran its own GAL program and the Family Court had a minimal role in overseeing the system. In 1997, the Minnesota Supreme Court revamped the GAL system at the request of the Legislature, due to an audit from the Legislative Audit Office. The audit highlighted many of the same issues raised in this report including lack of training, no statewide standards, and no uniform complaint process.

The Minnesota Supreme Court required the district courts to create full-time GAL administrator positions. The administrator is responsible for interviewing all prospective GALs and conducting a criminal background check on the prospective candidates. Minnesota also requires GALs to participate in a 40-hour training program before being appointed to their first case, and to participate in annual ongoing professional development training. Training programs include techniques on how to conduct an interview, how to identify domestic violence, and what components are required for a complete report.

Furthermore, the Minnesota GAL system promotes standards for how GALs are to conduct their investigations and evaluations. GALs are given a manual that provides a checklist of what they need to cover during the course of an investigation. In addition, the manual also provides guidelines for GAL reports. The GAL administrator also supervises GALs while they are working on a case. Finally, the administrator is responsible for investigating all complaints filed against GALs.

Findings

Progress at the Probate Court

Over the past few years, the Probate and Family Court has taken several steps to improve the GAL system. For example, in 1998 Chief Justice Sean Dunphy of the Probate and Family Court issued an order to track the timeliness of GAL investigations. In addition, the Probate and Family Court has been working to successfully implement SJC Rule 1:07, which created a rotating system for all fee-generating appointments. As a result of Rule 1:07, the Probate and Family Court will mandate that all GALs participate in six hours of annual professional development training beginning in 2001. Furthermore, the Probate and Family Court informed the Committee that it hopes to create standards for GAL investigations and reports in 2002. As the Committee neared the completion of its review, Chief Justice Dunphy indicated that he plans to convene a committee of GALs and judges to address some of the continuing problems with the GAL system.

Training and Eligibility

- Although GALs are called upon to make recommendations in the most difficult custody cases, Massachusetts does not ensure that GALs are properly trained to make critical decisions.
- Other states can serve as role models for implementing training programs for GALs, including upfront training and continuing education. For example, both Minnesota and New Hampshire require significantly more training for their GALs than Massachusetts.

Standards for Investigations and Reports

- GAL investigations and reports vary widely in thoroughness and content because no statewide standards exist for how GALs should conduct their investigations or report their findings to the court. There are existing guidelines on child custody evaluations by organizations such as the American Psychological Association that could be adopted by Massachusetts.
- Other states have published manuals establishing clear standards for GAL investigations and reports. These states can serve as role models for Massachusetts.
- The GAL system in Massachusetts does not effectively incorporate the standards of the Presumption of Custody Law, which is designed to protect children from parents with a history of domestic violence.
- GALs lack an effective forum to ask basic questions about the investigation and report process.

Complaint Process

- There is no widely understood process regarding how to file a complaint against a GAL.
- Minimal record keeping hinders the Court's ability to evaluate the success or failure of individual GALs or to monitor the overall GAL system.

Recommendations

Training and Eligibility

- The Probate and Family Court should establish thorough training and eligibility requirements for the GAL system, including:
 - A mandatory training program for all new GALs prior to being assigned to their first case, including training on domestic violence, substance abuse, and sexual assault; and
 - adequate mandatory annual professional development training.

Standards for Investigations and Reports

- The Probate and Family Court should develop clear guidelines describing how GAL investigations are to be conducted and what information reports should contain. Massachusetts should follow Florida and Minnesota's lead and publish a manual that outlines these standards.
- The standards must incorporate Massachusetts's statutory requirement that judges consider evidence of domestic violence when making custody and visitation determinations.
- The Probate and Family Court should establish an advisory committee of experts that GALs can contact to answer standard procedural questions that may arise during an investigation.

Complaint Process

- All parties to a custody dispute involving a GAL should be made aware of all avenues for filing a complaint.
- The Probate and Family Court should keep centralized records of all complaints filed against GALs and their resolution.

Appendix A: Summary of the
Findings of the Research
Project

APPENDIX

Excerpt from Florida and Minnesota Manuals

MINNESOTA GUARDIAN AD LITEM PRE-SERVICE TRAINING CURRICULUM

GUARDIAN AD LITEM MANUAL

Prepared by
Minnesota Supreme Court
State Court Administrator's Office
St. Paul, Minnesota

SECTION E: THE EFFECTS UPON CHILDREN OF DOMESTIC VIOLENCE

Studies have repeatedly shown that children who are exposed to domestic violence display an increased level of distress in comparison to those children who have not been exposed to domestic violence. The degree of impairment is directly related to the level of violence experienced, as well as the child's age at the time of abuse. As we will see in this section, children who have witnessed domestic violence are very similar to children who have been direct victims of abuse.

The following scenarios may seem extreme but, in fact, they are all too common:

- A seven year old boy, fearing for his mother's safety, jumps from a second story window to get help. When the police arrive they find a neighbor stabbed and the boy's mother seriously injured by the mother's ex-spouse.
- A ten year old girl tries to physically break up her parents' fight. She is thrown from the fight and hits the radiator. As a result one of her vertebrae breaks and she is paralyzed from the waist down.

Violence between the adult partners in a home is a reality that can not be ignored. An even greater need is to understand and realize the impact of such violence on child witnesses.

Children may be affected by family violence in any of the following ways. Keep in mind that you should look for a combination of behaviors, extremes or repeated behaviors.

BEHAVIORAL

- Acting out or withdrawn
- Overachieving or underachieving
- Refusing to go to school (afraid to leave home because they feel they need to stay at home to take care of things)
- Caretaking (filling adult roles)
- Aggressive or passive
- Very rigid defenses
- Constantly seeking attention, often labeled ADHD
- Bedwetting
- Nightmares
- Difficult to set limits
- Hitting adults
- Pre-delinquent and delinquent
- Limited tolerance
- Developmental regression

EMOTIONAL

- Guilt
- Shame
- Fear
- Anger
- Confusion
- Depressed
- Burdened
- Grief
- Insecure

PHYSICAL

- Somatic complaints (i.e., headaches, stomach aches)
- Nervous, anxious
- Short attention span
- Tired, lethargic (seems lazy)
- Often sick
- Neglectful of personal hygiene
- No reaction, at times, to physical pain

SOCIAL

- Isolated; few friends
- Overly social
- Relationships with playmates may start with great intensity and end abruptly
- Difficulty in trusting others
- Poor conflict resolution skills
- Unwilling to share or compromise
- May be passive or bullying with playmates
- Unclear sense of boundaries
- Poor image or anything that is stereotypically female

WORKING WITH VICTIMS AND ABUSERS

As a GAL you will hear very conflicting sides of the story when you work with families experiencing domestic violence. Often the abuser is very cooperative – remember that this person generally starts out a relationship with charm. This is not much different than the child who is growing up in an abusive home who initiates play relationships with great intensity and then the relationships end abruptly. It is not surprising that the majority of abusers grew up in homes where there was abuse. On the other hand, the victim may be less cooperative and may present herself or himself poorly. For the victim who is in court fighting over custody and visitation, all of her/his fears of losing the children feel like they will come true. Keep in mind that the abuser has told the victim that no one will believe him/her.

We also need to understand how traumatic this experience can be for the child, especially when the child has also been threatened. For example, the father of one eight-year-old child threatened to kill the child if he spoke even one word about the abuse. The child in turn elected to become mute rather than risk losing his life. It took six months of therapy before this child shared a few words.

As we will discuss later, it is important that you present yourself as a neutral individual; involved only to determine what is in the best interest of the child. If the victim or the abuser feel that you are spending more time with the other partner, you will find your job more complicated.

When making recommendations in cases involving domestic violence, it is important to remember that in general joint custody arrangements do not work well in families that have a history of domestic violence. When determining a visitation schedule, consider the following items:

- The safety of the victim and children.
- Assess how lethal the situation may be for the victim and children.
- Whether the victim will remain safe when the children are transferred from one residence to the other.
- Whether visits should be suspended or supervised? Does your community have a supervised visitation center?
- What safety plan has been developed for the victim and children; are the children old enough to comprehend and respond to a safety plan?
- Has the abuser taken responsibility for his or her behavior?
- How have the children responded to the violence; what is their level of fear or anxiety regarding visitation with the abuser?
- Is there a risk of parental abduction?



Introduction and Overview

FLORIDA GUARDIAN AD LITEM PROGRAM TRAINING MANUAL



Who should the GAL interview?

In your role as a GAL, you are expected to collect and review information on the case. In the course of collecting information you will want to talk with a number of individuals who have information about the child. In this section, we will identify the individuals you will most likely meet in the course of researching a case.

- o We will discuss the reasons you would have for meeting and interviewing these individuals.
- o We will also discuss the kind of information various professionals can provide about the child and the kind of information you may need to share with them.

The most obvious person you would interview is the child or children in the case. You will also interview professionals on the case, including:

- ☐ DCF Protective Investigators
- ☐ DCF Protective Service Counselor
- ☐ Foster Care Counselors
- ☐ Attorneys
- ☐ Foster Parents, if the child is out of the home.
- ☐ Teachers
- ☐ Medical Personnel
- ☐ Psychologists/Psychiatrists
- ☐ Day care Providers
- ☐ Law Enforcement
- ☐ Parents
- ☐ Siblings
- ☐ Legal guardians
- ☐ Extended family members
- ☐ Friends

